

# SEDGWICK

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**MEMO ENDORSED**

November 13, 2007

VIA HAND DELIVERY

Honorable Richard M. Berman  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

Take up discovery issues with  
Magistrate Judge. Motions, if  
any, are subject to the Court's  
individual rules. If there is no  
subject matter jurisdiction, the  
parties should so advise the Court  
ASAP.

SO ORDERED:  
Date: 11/14/07 *Richard M. Berman*  
Richard M. Berman, U.S.D.J.

www.sdma.com

Re: Quality Technology Services Holding, LLC v. CheckM8, Inc.  
Southern District of New York, Civil Action No. 07 CV 7458 (RMB)  
SDMA File No.: 3861-000002

Dear Judge Berman:

We represent Plaintiff Quality Technology Services Holding, LLC ("QTS") in the above-referenced matter. We are writing respectfully to request that the Court order Defendant to provide a Rule 26 disclosure, and respond to QTS's Local Rule 26.1 Demand.

In advance of the initial conference in this matter held on October 19, 2007, QTS served its Rule 26 Disclosure and a Local Rule 26.1 Demand on October 18, 2007. By e-mails dated October 31, 2007, and November 11, 2007, QTS demanded that Defendant serve its Rule 26 Disclosure and provide a response to the Local Rule 26.1 Demand. To date, Defendant has not responded.

Recently, Defendant has advised that diversity may not exist because it is incorporated in Delaware, where QTS also is organized as a limited liability company. Prior to filing its Complaint, QTS had purchased a Dun & Bradstreet report which demonstrated that Defendant was incorporated in New York, and confirmed this information with the New York Secretary of State's office (the New York corporate status now appears to be inactive). Thus, prior to agreeing to a remand to state court, the undersigned advised Defendant's counsel via e-mail and in a telephone conversation that Defendant must produce a certificate of good standing demonstrating that it is incorporated in Delaware, and fulfill its outstanding discovery obligations, before QTS will consider dismissing this action from federal court.

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Today, Defendant provided a certificate of good standing from August 2007, but still has not responded as to whether it will satisfy its discovery obligations. QTS is willing to stipulate to a dismissal of this action, but submits that Defendant should not be permitted to ignore its pending discovery obligations. Accordingly, QTS respectfully requests that Defendant be ordered to provide its Rule 26 Disclosure and respond to the Local Rule 26.1 Demand before this action is subject to dismissal.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'J. Gregory Lahr', with a long horizontal flourish extending to the right.

J. Gregory Lahr  
Sedgwick, Detert, Moran & Arnold LLP

JGL/

cc: Nicholas G. Sekas, Esq. (via facsimile)